S.B. CIVIL WRIT PETITION NO.5454/2005

Mangni Ram vs. A.C.J. (JD), & J.M. No.1, Jodhpur & Ors.

Date : 19.9.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. KS Gill a/w Mr.YR Sonel, for the petitioner.

- - - - -

Heard.

The petitioner is aggrieved against the order dated 9.9.2005 by which his application under Order 7 Rule 11 CPC was dismissed by the trial court.

Brief facts of the case are that the petitioner's brother/plaintiff filed the suit for possession and injunction impleading his brother Virma Ram also as party defendant in the suit. The plaintiff claimed the relief against the defendant no.1 only with the allegation that the suit property was originally belonging to the father of Surja Ram and Surja Ram got the property in dispute in partition. The plaintiff alleged that in the property in dispute, the plaintiff has 1/3rd share. The plaintiff further alleged that the plaintiff and his brothers never agreed to sell the land to anybody nor they executed the agreement to sale. The defendant no.1 has no right, title or interest over the land in dispute but in view of the facts pleaded in the plaint, the plaintiff is entitled for relief of injunction against the defendant no.1 and also prayed that the decree for possession be passed in favour

of the plaintiff.

The defendant no.2/petitioner submitted an application before the trial court stating therein that the plaintiff's suit is frivolous. In addition to above, the petitioner pleaded that the plaintiff has given wrong description of the property and in collusion with the defendant no.1, he want to grab the property of the defendant no.2. However, the defendant no.2 pleaded that since there is no allegation against the defendant no.2, therefore, no cause of action is disclosed in the plaintiff against the defendant no.2, therefore, the plaint may be rejected.

The trial court dismissed the application of the petitioner after observing that the disputed questions of facts are involved and, therefore, the application under Order 7 Rule 11 CPC cannot be accepted at this stage. The defendant was given opportunity to raise objection in the written statement.

According to learned counsel for the petitioner, it is clear from the plaint allegations that the plaintiff has not sought any relief against the petitioner/defendant no.2 and, therefore, the plaint should have been rejected.

I have considered the submissions of learned counsel for the petitioner and the reasons given in the impugned order.

It is clear from the plaint allegations that the plaintiff by saying that the defendants no.2 and 3 are also co-sharers, impleaded them as party to seek a relief of

possession and injunction against the defendant no.1 who is not a co-sharer along with the plaintiff and defendants no.2 and 3. Impleading defendants no.2 and 3 cannot be said to be defect of any nature by which the plaint could have been rejected by the trial court. Apart from it, this fact cannot be ignored that the defendant no.2 himself, the plaintiff filed suit in collusion with the defendant no.1 to grab the property of the defendant no.2, therefore, how petitioner can say that in the collusive suit in relation to the petitioner's property, he has been wrongly impleaded as party defendant ?

In view of the above, no interference is called for by this Court in the impugned order under writ jurisdiction. Accordingly, the writ petition having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya